

STATEMENT OF THE CASE

Gregory Saylor appeals his conviction for Child Molesting, as a Class A felony, following a jury trial. He presents a single issue for our review, namely, whether the State presented sufficient evidence to support his conviction.

We affirm.

FACTS AND PROCEDURAL HISTORY

Saylor is a cousin of J.N., who has a daughter A.N. One night in May 2007, eight-year-old A.N. spent the night at Saylor's house, along with S.N., A.N.'s half-sister. All three slept in the living room at Saylor's house. In the middle of the night, Saylor pulled down A.N.'s pants and underwear and used his hand to "feel" and "rub" her "private area." Transcript at 27-28. Saylor touched both the inside and outside of A.N.'s "private." Id. at 28. Saylor also "started rubbing" A.N.'s "boobs" underneath her shirt. Id. at 28-29. At some point, S.N. woke up and saw Saylor "on top of" A.N. on the couch, and she saw that Saylor "was sticking his hands in [A.N.]'s pants." Id. at 45. S.N. then got up and went to the restroom, at which point Saylor got up from the couch and went back to the recliner where he had been sleeping. But after S.N. returned to the living room to go back to sleep, she saw Saylor return to the couch with A.N.

S.N. talked to A.N. about what she had seen, and S.N. told A.N. that she should tell her parents. On June 8, 2007, A.N. was home with her parents, and Saylor was visiting. A.N. was supposed to spend the weekend with Saylor. But A.N. talked with her mother privately and told her that Saylor had been "trying to have s-e-x" with her. Id. at 77. A.N. started crying, and her mother asked her whether she was telling the truth. A.N.

assured her that she was telling the truth. A.N.'s mother then asked her to show her what Saylor had done to her. A.N. raised her shirt and told her mother that Saylor had fondled her chest and that he had put his hands down her pants. A.N. told her mother that Saylor had put his fingers inside her "private."

A.N.'s mother told J.N. about the molestation, and J.N. immediately confronted Saylor with A.N. and A.N.'s mother in the room. A.N. directly confronted Saylor, and Saylor responded that he "d[idn't] remember." Id. at 80. J.N. telephoned S.N., who confirmed that she had seen Saylor on the couch with A.N.

The State charged Saylor with two counts of child molesting, one as a Class A felony and one as a Class C felony. A jury found him guilty as charged, and the trial court entered judgment and sentence accordingly. This appeal ensued.

DISCUSSION AND DECISION

Saylor contends that the State presented insufficient evidence to support his conviction for child molesting, as a Class A felony.¹ In particular, he maintains that the evidence is insufficient to prove the required element of penetration. We cannot agree.

When reviewing the claim of sufficiency of the evidence, we do not reweigh the evidence or judge the credibility of the witnesses. Jones v. State, 783 N.E.2d 1132, 1139 (Ind. 2003). We look only to the probative evidence supporting the verdict and the reasonable inferences therein to determine whether a reasonable trier of fact could conclude the defendant was guilty beyond a reasonable doubt. Id. If there is substantial evidence of probative value to support the conviction, it will not be set aside. Id.

¹ Saylor appears to suggest that he is challenging the sufficiency of the evidence supporting both of his convictions. But his argument addresses only the sufficiency of the evidence regarding the Class A felony conviction. As such, we address only the Class A felony conviction on appeal.

To prove child molesting, as a Class A felony, the State was required to show that Saylor, who was at least twenty-one years old, performed or submitted to deviate sexual conduct with A.N., who was under fourteen years old. Ind. Code § 35-42-4-3(a)(1). “Deviate sexual conduct” means an act involving a sex organ of one person and the mouth or anus of another person, or the penetration of the sex organ or anus of a person by an object. Ind. Code § 35-41-1-9. A finger is an “object” within the meaning of Indiana Code Section 35-41-1-9. See D’Paffo v. State, 778 N.E.2d 798, 802 (Ind. 2002).

The evidence is undisputed that, at the time of the offenses, Saylor was over the age of twenty-one and A.N. was under the age of fourteen. And the State presented A.N.’s testimony that Saylor touched her “both” on the “outside” and “inside” her “private.” Transcript at 28. And A.N.’s mother testified that A.N. “demonstrate[d]” that Saylor “had put his fingers inside of her[.]” Id. at 82. Further, A.N.’s mother testified that A.N. told her “that his finger actually went in there.” Id. at 88. In Scott v. State, 771 N.E.2d 718, 725 (Ind. Ct. App. 2002), trans. denied, disapproved of on other grounds, Louallen v. State, 778 N.E.2d 794 (Ind. 2002), this court held that similar testimony was sufficient to support the defendant’s conviction for child molesting based upon deviate sexual conduct. And our Supreme Court has “emphasize[d] that proof of the slightest penetration is enough to support a conviction [for child molesting, as a Class A felony].” Spurlock v. State, 675 N.E.2d 312, 315 (Ind. 1996). Here, we hold that the evidence is sufficient to support Saylor’s Class A child molesting conviction.

Still, Saylor contends that the witnesses’ testimony was contradictory and cannot support his conviction. In particular, Saylor maintains that A.N. seemed “confused” by

the questions during her testimony. Brief of Appellant at 6. And he asserts that A.N.'s mother was equivocal in her testimony that A.N. had told her that Saylor had inserted his finger into her "private." But Saylor's contentions amount to a request that we reweigh the evidence, which we will not do. Again, the evidence is sufficient to support his conviction for child molesting, as a Class A felony.

Finally, we observe that in his Statement of Issues, Saylor asserts that his sentence is inappropriate in light of the nature of the offenses and his character. But in the argument section of his brief, Saylor does not make any argument on that issue. As such, the issue is waived. See Ind. Appellate Rule 46(A)(8)(a). Waiver notwithstanding, given Saylor's undisputed violation of a position of trust with the victim, we cannot say that the advisory, aggregate sentence of thirty years is inappropriate.

Affirmed.

MAY, J., and ROBB, J., concur.